

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

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**FILE:** B-212783; B-212907**DATE:** January 19, 1984**MATTER OF:** Easco Tools, Inc.; Easco Hand Tools, Inc.**DIGEST:**

1. Where a bidder takes no exception in its bid to a solicitation requirement that hand tools be manufactured wholly in the United States, and bid samples supplied with the bid do not indicate nonconformance with this requirement, GAO has no basis to conclude that the bid is nonresponsive.
2. A bidder's ability to supply items manufactured wholly in the United States concerns the bidder's responsibility. GAO reviews affirmative determinations of responsibility only upon a showing of possible fraud or bad faith on the part of procuring officials or if definitive responsibility criteria allegedly were misapplied.
3. GAO does not conduct investigations in connection with its bid protest function for the purpose of establishing the validity of a protester's assertions.

Easco Tools, Inc. protests the award by the General Services Administration (GSA) of a requirements contract for socket wrenches to American Kal Enterprises, Incorporated, under solicitation No. FEN-FR-A0129-A-8-8-83. Easco Hand Tools, Inc. protests any award by GSA to American Kal of a requirements contract for wrench sets under solicitation No. FEN-EP-A3118-A-5-6-83. In each case the protester contends that American Kal is not a manufacturer offering products manufactured wholly in the United States as required by the solicitations.

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The protesters suggest that American Kal will use foreign raw forgings and that its finished products will therefore be "foreign", as defined by the solicitations. For this reason, and because some of the bid samples submitted by American Kal were allegedly not manufactured wholly in the United States, the protesters contend that American Kal's bids were nonresponsive. The protests are denied in part and dismissed in part.

Each solicitation provided that awards would be made only to manufacturers or regular dealers offering hand tools manufactured wholly in the United States or its possessions. This domestic manufacture requirement implemented section 723 of the Act of December 21, 1982, Pub. L. 97-377, 96 Stat. 1830, 1854, which provided that, except for purchases in amounts not exceeding \$10,000, no part of a Department of Defense appropriation could be used to buy hand tools not produced in the United States or its possessions. Because the Department of Defense will be the predominant user of the items being procured here, the solicitations provided that offers from firms offering products not manufactured wholly in the United States would be considered nonresponsive. The solicitations defined a "foreign" product as one either manufactured outside the United States or containing any component, regardless of cost, manufactured outside the United States.

The protesters do not suggest that American Kal took any exception in its bids to the requirement to supply domestic products. In addition, although the protesters contend that the bid samples submitted by American Kal were not wholly domestic, the protesters do not contend that this was apparent at the time of bid opening or that the bid samples otherwise evidenced nonconformance. Thus, there is no basis for us to conclude that the bids were nonresponsive. See Raymond Engineering, Inc. B-211046, July 12, 1983, 83-2 CPD 83. We deny this aspect of the protests.

Essentially, the protesters question American Kal's ability to supply products wholly manufactured in the United States in conformance with the terms of the solicitations, a matter concerning American Kal's responsibility. In this regard, the agency made award to American Kal after

B-212783; B-212907

obtaining separate plant facilities reports in connection with each procurement. Both reports concluded that American Kal is capable of supplying domestically-produced products. This Office does not review affirmative determinations of a prospective contractor's responsibility unless there is a showing of possible fraud or bad faith on the part of procuring officials or the protester alleges that definitive responsibility criteria were misapplied. Delta Elevator Service Corporation, B-208252, March 23, 1983, 83-1 CPD 299. The protesters contend that American Kal submitted "incorrect, inadequate and misleading information" to GSA, but do not allege fraud or bad faith by the procuring officials. In addition, we do not consider the requirement that the tools be manufactured wholly in the United States to be a definitive responsibility criterion. Easco Tools, Inc., B-212716, September 16, 1983, 83-2 CPD 338. We dismiss this aspect of the protests.

Both protesters request that we investigate to determine whether the bid samples submitted by American Kal were, and the items to be supplied will be, wholly manufactured in the United States. In addition, Easco Hand Tools, Inc., suggests that either we or the agency disclose the names and addresses of American Kal's domestic manufacturing facilities. This Office does not conduct investigations in connection with its bid protest function for the purpose of establishing the validity of a protester's assertions, Easco Tools, Inc., *supra*, and the suggestion concerning disclosure of information may be pursued with the agency in accordance with the provisions of the Freedom of Information Act, 5 U.S.C. § 552 (1982).

The protests are denied in part and dismissed in part.

*for*   
Comptroller General  
of the United States